

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TRAVELERS CASUALTY AND SURETY COMPANY as
Administrator for RELIANCE INSURANCE
COMPANY,

Plaintiffs,

-against-

DORMITORY AUTHORITY - STATE OF NEW YORK, TDX
CONSTRUCTION CORP. and KOHN PEDERSON FOX
ASSOCIATES, P.C.,

Defendants.

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DORMITORY AUTHORITY OF THE STATE OF NEW YORK
and TDX CONSTRUCTION CORP.,

Third-Party Plaintiffs,

-against-

TRATAROS CONSTRUCTION, INC.,

Third-Party Defendant.

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TRATAROS CONSTRUCTION, INC. and TRAVELERS
CASUALTY AND SURETY COMPANY,

Fourth-Party Plaintiffs,

-against-

CAROLINA CASUALTY INSURANCE COMPANY; BARTEC
INDUSTRIES, INC.; DAYTON SUPERIOR SPECIALTY
CHEMICAL CORP. a/k/a DAYTON SUPERIOR
CORPORATION; SPECIALTY CONSTRUCTION BRANDS,
INC. t/a TEC; KEMPER CASUALTY INSURANCE
COMPANY d/b/a KEMPER INSURANCE COMPANY;
GREAT AMERICAN INSURANCE COMPANY; NATIONAL
UNION FIRE INSURANCE COMPANY OF PITTSBURGH,
P.S.; UNITED STATES FIRE INSURANCE COMPANY;
NORTH AMERICAN INSURANCE COMPANY; ALLIED
WORLD ASSURANCE COMPANY (U.S.) f/k/a
COMMERICAL UNDERWRITERS INSURANCE COMPANY;

RULE 56.1 STATEMENT

Docket No. 07-cv-6915
(DLC)

ZURICH AMERICAN INSURANCE COMPANY d/b/a
ZURICH INSURANCE COMPANY d/b/a OHIO CASUALTY
GROUP; HARLEYSVILLE MUTUAL INSURANCE COMPANY
(a/k/a HARLEYVILLE INSURANCE COMPANY); JOHN
DOES 1-20 and XYZ CORPS. 1-19 ,

Fourth-Party Defendants.

-----X

PLEASE TAKE NOTICE that Fourth-Party Defendants Allied World Assurance Company (U.S.) Inc. and North American Specialty Insurance Company as successor in interest to Commercial Underwriters Insurance Company hereby sets forth its Rule 56.1 Statement of issues it believes there to be no genuine issue of fact.

1. A policy of insurance was issued by Commercial Underwriters Insurance Company to Trataros Construction Inc., for the policy period of April 1, 1999 to April 1, 2000, which provided certain coverages and contained as a condition precedent to coverage a standard notice provision.

See Simon Affid Exhibit "G".

2. North American Specialty Insurance Company is the successor in interest to Commercial Underwriters Insurance Company

See Simon affidavit Exhibit "H".

3. On August 4, 2004, The Dormitory Authority of the State of New York (DASNY) commenced an action against Trataros Construction Corp., alleging that the work performed by Trataros and its subcontractors was defective, substandard and otherwise unacceptable.

See Simon affidavit Exhibit K.

4. By Complaint dated February 17, 2005, and not served until March 2005, Trataros first notified North American Specialty Insurance Company as successor in interest to Commercial Underwriters Insurance Company of the claims and litigation asserted against it by DASNY by serving said complaint on Allied World Assurance Company (U.S.) Inc. (Allied World)

See Simon affidavit Exhibits H and L

5. Allied World's and North American Specialty Insurance Company as successor in interest to Commercial Underwriters Insurance Company' first notice of any occurrence or suit that would possibly implicate coverage for Trataros under the Commercial Underwriters policy was the service of the complaint in March 2005. See Simon affd Exhibit H and L

6. Trataros/Travelers does not have a reasonable excuse for its failure to notify movant of the occurrence or claims against it as required under the policy of insurance.
Simon affd, Exhibit G, H

Dated: New York, New York
August 6, 2008

SMITH MAZURE DIRECTOR WILKINS
YOUNG & YAGERMAN, P.C.

By: 

JOEL M. SIMON
For the Firm
SMITH MAZURE DIRECTOR WILKINS YOUNG &
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Insurance Company
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Civil Action No.. 07 CV 6915 (DLC)

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INSURANCE COMPANY; NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, P.S.; UNITED
STATES FIRE INSURANCE COMPANY; NORTH AMERICAN INSURANCE COMPANY; ALLIED WORLD ASSURANCE
COMPANY (U.S.) f/k/a COMMERCIAL UNDERWRITERS INSURANCE COMPANY; ZURICH AMERICAN INSURANCE
COMPANY d/b/a ZURICH INSURANCE COMPANY d/b/a OHIO CASUALTY GROUP; HARLEYSVILLE MUTUAL
INSURANCE COMPANY (a/k/a HARLEYVILLE INSURANCE COMPANY); JOHN DOES 1-20 and XYZ CORPS.
1-19 ,

Fourth-Party Defendants.

RULE 56.1 STATEMENT

**SMITH MAZURE DIRECTOR WILKINS
YOUNG & YAGERMAN, P.C.**

Attorneys for Fourth-Party
Defendants Allied World
Assurance Company (U.S.) Inc.
and North American Specialty
Insurance Company as successor
in interest to Commercial
Underwriters Insurance Company
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New York, New York 10038-3198